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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,642	03/29/2004	Boris Reydel	6263/DIV	9579

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EXAMINER

WIEKER, AMANDA F.

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/810,642

Applicant(s)

REYDEL ET AL.

Examiner

Amanda F. Wieker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 12-22 is/are pending in the application.
- 4a) Of the above claim(s) 1 and 12-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Claims 20-22 in the action filed on 29 March 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 1 and 12-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 29 March 2004.

Information Disclosure Statement

3. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

4. Figures 1 and 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.121(d)) so as not to obstruct any portion of the drawing figures. If the changes are not

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accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 2,534,664 to Gottlieb et al.

Gottlieb et al. disclose a device and method for treating constipation, including the use of a rectum fitting. The claimed method is anticipated by the normal use of the device as disclosed by Gottlieb et al. Gottlieb et al. disclose that a person can slowly lower themselves onto the toilet seat, by grasping and hanging from any suitable support, such as a pair of rings (12). The method steps of: positioning a person on a seat of a toilet, straightening a person's torso, slightly reclining said person's torso toward a water tank of said toilet, and positioning a person's feet on a surface a sufficient distance in front of said toilet so that said person's hips are positioned above said toilet seat, wherein the person's arms are extended upward (all accomplished while lowering from rings onto the seat), are anticipated by the normal use of the device disclosed by Gottlieb et al.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gottlieb et al.

Gottlieb et al. disclose a device and method for treating constipation, including the use of a rectum fitting. The claimed method is substantially anticipated by the normal use of the device as disclosed by Gottlieb et al. Gottlieb et al. disclose that a person can slowly lower himself or herself onto the toilet seat, by grasping and hanging from any suitable support. Gottlieb et al. do not specify that the support be a bar.

However, Gottlieb et al. disclose the use of a support, such as a set of rings or a trapeze bar, for exercising use and for use in rising and lowering from above the toilet seat.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the device and method for treating constipation, as disclosed by Gottlieb et al., wherein the support for grasping and hanging above the toilet comprises a trapeze bar. The claimed method is made obvious by the normal use of the device disclosed by Gottlieb et al.

9. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlos in view of Gottlieb et al.

Carlos discloses a device and method capable of being used in the relief of constipation, wherein the claimed method is made obvious by the normal use of the device disclosed. Carlos discloses a support bar (a') including arm rests (B) in which a person can place their arms, to give support to the person while sitting on and rising from a toilet. The method steps of: positioning a person on the seat of a toilet, straightening a person's torso, slightly reclining said person's torso toward the back of said toilet, and positioning a person's feet on a surface a

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sufficient distance in front of said toilet so that said person's hips are positioned above said toilet seat, wherein the person's arms are extended upward (being held upward in arm straps B), and wherein the person can passively semi-hang from the bar (a'), are anticipated by the normal use of the device. Because the support bar and arm supports are used to aid a person in sitting on or rising from a toilet, the person must at least momentarily semi-hang from the bar. Carlos does not specify that the toilet have a water tank.

Gottlieb et al. disclose a conventional toilet having a water tank to allow flushing of the toilet.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the device and method disclosed by Carlos, wherein the toilet includes a water tank, as taught by Gottlieb et al., to allow flushing of the toilet.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda F. Wieker whose telephone number is 703-306-4056. The examiner can normally be reached on Monday-Thursday, 8:30 - 6:00 and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

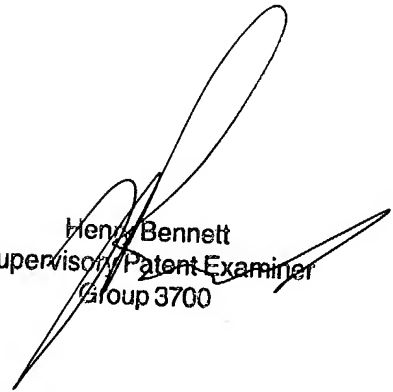
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Amanda F. Wicker
Examiner
Art Unit 3743

afw



Henry Bennett
Supervisory Patent Examiner
Group 3700